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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
HERMITAGE HEALTH CARE, No. 00-12535
Debtor(s).

CHARLES E. SIMS, Trustee,
Plaintiff(s),
v. A.P. No. 04-1033
STATE OF CALIFORNIA, DEPARTMENT
OF HEALTH SERVICES,
Defendant(s).

Memorandum on Motion to Dismiss

In this Chapter 7 case, the California Department of Health Services (“DHS”) has filed three proofs of claim relating to licensing fees and citation penalties arising out of the debtor’s operation of nursing homes; the amended amount now claimed is \$38,550.00. Other State agencies, including the Office of Statewide Health Planning and Development, the Employment Development Department and the State Board of Equalization have also filed claims totaling about \$200,000.00. In this adversary proceeding, plaintiff and Chapter 7 trustee Charles Sims seeks to recover \$66,216.74 in payments he

1 alleges DHS owes the debtor for nursing home services performed in accordance with an agreement
2 between the debtor and DHS. Alleging sovereign immunity, DHS has moved for dismissal.

3 The court begins its analysis by noting that some courts, citing the special bankruptcy provision
4 in the Constitution, have given effect to § 106(a) of the Bankruptcy Code notwithstanding non-
5 bankruptcy cases expanding sovereign immunity in other areas of law. See, e.g., *In re Hood*, 319 F.3d
6 755 (6th Cir. 2003), affirmed on other grounds in *Tennessee Student Assistance Corp. v. Hood*, -- U.S.
7 --, 124 S.Ct. 1905, 158 L.Ed.2d 764 (2004). Since the Supreme Court has not ruled on this specific issue
8 and since the parties have focused their arguments on § 106(b), the court will decide the case pursuant
9 to that section.

10 Section 106(b) provides:

11 (b) A governmental unit that has filed a proof of claim in the case is
12 deemed to have waived sovereign immunity with respect to a claim against such
13 governmental unit that is property of the estate and that arose out of the same
transaction or occurrence out of which the claim of such governmental unit arose.

14 The issue in applying § 106(b) is whether the trustee's claim for nursing home services it
15 rendered arises out of the same transaction or occurrence as the licensing fees and penalties which are
16 the subject of the claims. That the statute is liberally interpreted in favor of federal adjudication is
17 evidenced by the inability of the State to cite any case where sovereign immunity was upheld even though
18 a claim was filed. The two cases primarily relied upon by the State, *In re Harleston*, 331 F.3d 699 (9th
19 Cir. 2003), and *In re Lazar*, 237 F.3d 967 (9th Cir. 2001), both denied the State's sovereign immunity
20 claims because the State had filed claims. For a proof of claim to waive sovereign immunity there need
21 only be a logical relationship between it and the estate's claim; arising out of the same transaction or
22 occurrence is not the same thing as *being* from the same transaction or occurrence. *In re Price*, 42 F.3d
23 1068, 1073 (7th Cir. 1994). The construction is a liberal one in favor of waiver. *Lazar*, at 980.

24 All of the claims of the State arise out of the debtor's nursing home operations, as do the estate's
25 claims against the estate. They are logically related to each other, so the State must be deemed to have
26 waived its sovereign immunity. Its motion must accordingly be denied. Counsel for the Trustee shall

1 submit an appropriate form of order.¹

2 Dated: September 9, 2004

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Alan Jaroslovsky
U.S. Bankruptcy Judge

25 ¹The court also notes that the State's claims far exceed the amount sought in this adversary
26 proceeding. Until and unless the court were to require the State to pay anything to the bankruptcy estate,
which is unlikely, the dispute is *in rem* as only involving the size of the State's ultimate dividend. Thus,
the State's desire to prosecute an interlocutory appeal is premature.